

EXHIBIT 8



THE CITY OF NEW YORK
LAW DEPARTMENT

100 CHURCH STREET
NEW YORK, NY 10007

JOHN H. GRAZIADEI
Senior Counsel

Telephone: (212) 442-3551
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MICHAEL A. CARDOZO
Corporation Counsel

December 26, 2007

VIA HAND DELIVERY


Eric Siegle, Esq.
Siegle & Sims L.L.P.
217 Broadway, Suite 611
New York, New York 10007

Re: *Zhao v. City of New York, et al.*, 07 CV 3636 (LAK) (MHD)

Dear Mr. Siegle,

Under this cover please find documents bearing Bates numbers NYC 457 – NYC 686, which are documents disclosed to defendants by the Queens District Attorney's Office pursuant to subpoena. Please note that, as per the parties' agreement, personal information including dates of birth and tax identification numbers has been redacted. Confidential informant information and identifying data has been redacted pursuant to the Court's December 4, 2007 Order and has been identified on the documents accordingly. Certain information was redacted by the Queens District Attorney's office. Certain documents have been marked "FOR ATTORNEY'S EYES ONLY – CONFIDENTIAL." As per the Court's December 4 and December 14, 2007 Orders, all documents marked for attorney's eyes only produced by defendants must be kept confidential by plaintiff's counsel and may not be disclosed to anyone, including experts, investigators, or plaintiff. This production does not constitute a waiver of any previously asserted objections. Please contact me with any questions.

Sincerely,



John H. Graziadei
Senior Counsel

cc: Alexander Peltz, Esq.

EXHIBIT 10

Eric Siegle

From: Eric Siegle
Sent: Thursday, January 03, 2008 4:17 PM
To: 'Graziadei, John H.'
Cc: Rossan, Jennifer; Jonathan Sims
Subject: RE: Yang Feng Zhao

As I stated to you clearly on December 20, 2007, the order of December 4, 2007 does not permit you to make any redactions to the documents produced by the QCDAO pursuant to your subpoena. .

With regard to your statement that plaintiff would "not take issue with minor redactions" purportedly contained in our December 20, 2007 correspondence, that paragraph states as follows:

Regarding the materials which were the subject of the Court's in camera inspection referred to in the Amended Memorandum and Order, Part A, "Investigation File," defendants were "required to produce to plaintiff's counsel of the so-called investigatory documents previously withheld on the ground of the law enforcement privilege, but may redact the names of, and other identifying data regarding, confidential informants whose identities have not previously been revealed to plaintiff or his counsel by the prosecutors or the defendants." Without qualification, defendants were not permitted to make any other redactions. In contravention of the Court's order, defendants have improperly redacted virtually every document disclosed.

While plaintiff, for purposes of reasonably resolving this issue amicably between the parties does not take issue with minor redactions (ie. MOS tax id. #s), although in clear violation of the Order, the following redactions must be immediately cured by defendants insofar as they redact anything more than the "name" and/or "identifying data," which clearly refers to social security numbers and dates of birth, of confidential informants not previously known to plaintiff's counsel from the prosecutors or defendants herein (plaintiff thereafter listed numerous documents which still have not been provided in full to date).

This courtesy was afforded to you by our office with regard to your prior transgressions in baselessly redacting material despite the Court order of December 4, 2007, not continuing willful and contumacious violations thereof, which we immediately brought to your attention and told you you had absolutely no basis to do. This is clear from my December 26, 2007 e-mail correspondence to you, as well, wherein we advised you of your transgressions and gave you ample opportunity to cure, which opportunity you have refused to take advantage.

As to Mr. Sims' statement to you on December 13, 2007, he advised that pursuant to the December 4, 2007 Order you are to provide unredacted copies of all documents previously disclosed by defendants not listed on your privilege log, which were served prior to the December 4, 2007 order, and that we would give you until end of business the next day to ameliorate this transgression, but not take issue with tax id #s. You failed to take advantage of this courtesy as well.

You continue to attempt to manipulate what has actually transpired in this litigation and attempt to use the courtesies we have offered you herein as a sword to justify your improper conduct. This will no longer be tolerated and will be brought to the Court's attention in our motion.

Please be guided accordingly. As I am sure you are aware from my facsimile correspondence from this morning, we had to contact counsel for Mr. Reibstein to adjourn his deposition of January 7, 2008, due to your conduct in improperly redacting their documents.

EXHIBIT 11

Jonathan Sims

From: Graziadei, John H. [jgraziad@law.nyc.gov]
Sent: Monday, October 01, 2007 8:06 PM
To: Jonathan Sims
Subject: RE: Zhao-deps

I did not write that you would have consented without getting back to me, only that we had had discussions and that I would be requesting those dates (please see below carefully); you certainly never suggested "from day one" that Zhao required a Cantonese interpreter during his deposition although perhaps you should have if you wanted your client to understand the questions; you clearly have copies of the videotapes already since you produced them to us. I will note to the Court that you have consented to the 22nd for Rivera. Based upon defendants' receipt of notice of your motion, we will have to respond to the motion today, although we would have preferred to wait until you could have expressed an accommodation of the witnesses as we discussed. You did know, however, that I told you I would be responding tonight.

EXHIBIT 12

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----x

YANG FENG ZHAO,

plaintiff,

v.

07CV3636(LAK)(MHD)

CITY OF NEW YORK, et al.,

Defendants.
-----x

New York, NY
October 16, 2007
9:10 a.m.

Before:

HON. MICHAEL H. DOLINGER

District Judge

APPEARANCES

SIEGLE & SIMS
Attorneys for Plaintiff
ERIC W. SIEGLE

NEW YORK CITY LAW DEPARTMENT
Office of the Corporation Counsel
for The City Of New York
JOHN GRAZIADEI
Assistant Corporation Counsel

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(Case called)

THE COURT: What's going on here. I notice some very tight deadlines. There seems to be a claim by plaintiff that the defendant has failed to turn over material that's relevant and has claimed privilege, that documents are privileged.

MR. SIEGLE: Judge, it is our motion. I think it would be appropriate, there are several layers to our motion. By Judge Kaplan's rules we are only allowed 4 pages basically to make a full panoply of objections we have for what's transpired as to the city's conduct. I would like to address them one by one with the court.

First, judge, we ask for a preclusion of --

THE COURT: Why don't we start with what's wrong, then

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14 you can tell me what your remedies are.
15 MR. SIEGLE: The first thing that the city has not
16 done is provide us with the names of any witnesses at all
17 whatsoever pursuant to Rule 26(a).

18 THE COURT: I thought that I detected in this service
19 of documents, whether it be 26(a) disclosure or otherwise, a
20 reference to certain specified documents as containing the
21 names of the witnesses. I did not have the benefit of those
22 documents, so I couldn't tell. In any event, am I misled on
23 that or are you in fact taking depositions of the people who
24 are witnesses in the case.

25 MR. SIEGLE: No, judge.
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1 MR. GRAZIADEI: If I may.

2 THE COURT: One at a time.

3 MR. SIEGLE: I would be happy to hand up those 31
4 pages. They are basically court records. There are only names
5 of two witnesses in those 31 pages, and those are the two
6 defendants that are named in the lawsuit. Everything else is
7 based on our independent investigation, and we are speculating
8 as to what any of those officers would say until we dispose
9 them.

10 THE COURT: Let me back up. What have you done in
11 discovery; what remains to be done.

12 MR. SIEGLE: As of this date, other than documentary
13 discovery which is before the court which we need, we have
14 given our client, made our client available to the city who was
15 deposed last week on October 10 and 11. On Friday we deposed
16 detective Richard Maline, and yesterday we deposed defendant
17 detective Billy Milan.

18 As the court will also see, there is a schedule for
19 the rest of the week for my office to conduct I believe it is
20 five more depositions, and the city has yet to schedule a 6th,
21 another detective, I don't know want to say numbers because
22 they are all over the place, which they can't get done by the
23 18th.

24 THE COURT: Did you ask these two detectives whom you
25 have deposed for the names of the people you deem permanent to
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1 the case.

2 MR. SIEGLE: Actually based on the testimony
3 yesterday, your Honor, of one of the defendants in the case,
4 it's becoming apparent that we may not even need the testimony
5 of some of the other people that we have noticed. This has
6 been a wild goose chase.

7 THE COURT: Answer my question. Have you asked the
8 witnesses in deposition for the names of those people whom you
9 thought might be relevant.

10 MR. SIEGLE: Absolutely. Yesterday during the
11 deposition of detective Billy Milan, we heard the names of
12 several other officers involved in the case for the very first
13 time. Those names were not included on any of the paperwork we
14 received from the police department. A decision has not been
15 made, we just took the testimony yesterday, as to whether or
16 not we would need that deposition testimony, but at this point,
17 I don't believe it's going to be necessary based on what has
18 transpired.

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19 THE COURT: Given the schedule, you had better make up
20 your mind very quickly.

21 MR. SIEGLE: We noticed the witnesses for the first
22 week in September. The city refused to produce them
23 unilaterally. We made a motion before Judge Kaplan. These are
24 the only dates the city would make these people available.
25 They set the schedule; we did not. They claim they are making

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1 accommodation to us because a lot of these detectives are
2 retired and this is the schedule they are working them into.
3 We asked as part of our initial application to Judge
4 Kaplan back in September to enlarge the time for discovery
5 based on the late schedule and Judge Kaplan, I think the
6 comment was show me what you get started then we will deal it.
7 We are getting started. The city is putting us to the
8 last day of the discovery deadline, not by our choice.

9 THE COURT: Let's look at open items. What are the
10 open items in terms of discovery.

11 MR. SIEGLE: The first issue would be with regard to
12 the city failing to notice any witnesses other than those 31
13 pages we talked about. I handed up a packet to the court.

14 THE COURT: OK.

15 MR. SIEGLE: Our application would be to preclude the
16 city and defendants Milan and Ng from introducing testimony and
17 evidence from anybody's name not contained in the 31 pages,
18 which is all the city said they had used to provide 26(a)
19 disclosure. The individual defendants themselves answered
20 approximately five or six weeks after the city and after the
21 city's 26(a) disclosure, and the individual defendants
22 themselves, the two officers that were involved in this
23 investigation, never noticed the names of any witnesses in this
24 case at all. They provided no 26(a) disclosure at all
25 whatsoever.

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1 THE COURT: They have not provided any 26(a)
2 disclosure.

3 MR. SIEGLE: Whatsoever. That's in our application.
4 In paragraph 2, the city provided, I believe it's July, the
5 city provided theirs, it's exhibit, I am sorry, on July 30,
6 Exhibit 2 of our motion. There has been no other 26(a)
7 disclosure from anybody else. There has been no supplemental
8 26(a) disclosure either throughout.

9 THE COURT: Did you ever take this up with the
10 defendants' lawyers.

11 MR. SIEGLE: Yes.

12 THE COURT: With what result.

13 MR. SIEGLE: With the result, we provided you the
14 documents, find the names. That's the response to the court.
15 I don't know --

16 THE COURT: Be more precise. Did you ever take up
17 with the city's attorney the failure of the individual
18 defendants to provide 26(a) disclosure.

19 MR. SIEGLE: Yes. It was a subject of our first
20 motion to compel which was ruled on by Judge Kaplan. Judge
21 Kaplan said provide all 26(a) disclosure by October 8. There
22 is a court order; that's Exhibit 1 of the motion. We received
23 nothing additional by October 8, as it says in paragraph 2. If

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24 the court looks at Exhibit 1, the order is right there, because
 25 we did bring it up on our first motion to compel.
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1 THE COURT: OK.
 2 MR. SIEGLE: Next issue comes as to what the city --
 3 MR. GRAZIADEI: Your Honor --
 4 THE COURT: Counsel, you are going to have to restrain
 5 yourself.
 6 MR. GRAZIADEI: I would just request that we address
 7 them one by one, because Mr. Siegle has introduced so much.
 8 THE COURT: Thank you for your advice, but we will do
 9 it my way.
 10 MR. GRAZIADEI: Absolutely, your Honor.
 11 THE COURT: Yes.
 12 MR. SIEGLE: The next issue comes as to compelling
 13 disclosure of documents, documents which we asked to be
 14 disclosed and made motion to in September before Judge Kaplan
 15 as well.
 16 THE COURT: You filed a motion in September.
 17 MR. SIEGLE: We filed a handwritten letter the end of
 18 July and August. Judge Kaplan was out the whole month of
 19 August. We went to Judge Kimba Wood, the Part I duty judge at
 20 that time, asked her to respectfully deal with the issues.
 21 Judge Wood referred us, said Judge Kaplan would be back before
 22 the discovery deadline actually occurred, therefore, these
 23 issues could be raised before Judge Kaplan.
 24 On September 11, Judge Kaplan called the parties in
 25 for a conference. At that conference, Judge Kaplan said you
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1 have until October 18 to get things done. Get things done.
 2 And then we made these subsequent motions, one at the end of
 3 September, which led to the October 2 court order by which we
 4 are claiming preclusion by the failure of the city to disclose
 5 on October 8, and then when the city improperly responded and
 6 failed to respond on October 8, we immediately made the October
 7 9 motion which is presently before your Honor.
 8 At the September 11 conference before Judge Kaplan,
 9 the city stated to the court that they fully responded to our
 10 interrogatories and requests to produce and that there was a
 11 lot of material they were going to turn over to plaintiff once
 12 a confidentiality stipulation was signed. Amongst the
 13 documents that were requested which Mr. Graziadei specifically
 14 told Judge Kaplan on September 11 that would be turned over
 15 were complaints against the police officers that are the
 16 defendants in this case. Excuse me; they are not police
 17 officers, they are detectives.
 18 Specifically, Mr. Graziadei pointed out to the court,
 19 as the court will see as Exhibit 9 of our motion, the
 20 confidentiality stipulation, paragraph 2, states and
 21 contemplates that, I will read it slowly for the court and for
 22 the record:
 23 As used herein, confidential materials shall mean New
 24 York City Police Department personnel and disciplinary records
 25 and records of investigations regarding the conduct of members
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of the service of the NYPD conducted by the NYPD, the Civilian
Complaint Review Board, or other agency which shall be stamped
with the term confidential or otherwise designated by the
defendants.

Then there is an exception that goes to records that
the plaintiff would have independent.

The pertinent part of that paragraph is, as was
relayed to Judge Kaplan by the city, they were going to turn
over disciplinary records including CCRB materials, so long as
we executed the stipulation. Then when we finally received the
disclosure from the city on October 1, those materials were
absent. Then when we received other materials from the city on
October 8, those materials again were absent.

We addressed that issue with Mr. Graziadei right away.
He said it was covered by the privilege log. I refer the court
now to the privilege log. Nowhere in that privilege log does
it discuss disciplinary records or complaints against the
individual officers.

THE COURT: What is the exhibit number for the
privilege log.

MR. SIEGLE: Exhibit 5, I am sorry, your Honor, and
because of the way it's scanned in, we couldn't include tabs; I
apologize to the court.

THE COURT: That's OK.

MR. SIEGLE: It's a 2-page document, Exhibit 5.

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(Pause)

THE COURT: I have Exhibit 4, defendants' responses to
the first consolidated set of interrogatory demands, then there
is a confidentiality stipulation.

MR. SIEGLE: That's part of the same exhibit, part of
their response. Then the following exhibit has a label that
says Exhibit 5. The next two pages are a chart by the city.

THE COURT: I have it.

MR. SIEGLE: With regard to the privilege log, there
is not a single mention in there about disciplinary records or
complaints, as the court will see. I would also point out to
the court, we state to the court in our motion, this privilege
log is wholly improper pursuant to Local Rule 26.2(a)(1)(A).
The local rule in this district states, where you are going to
use a privilege log to refuse to produce documents, you are to
specifically list and detail the documents in such a fashion
that the opposing party can serve a subpoena duces tecum for a
specific document should that become necessary.

The city's privilege log is wholly improper. It lumps
together hundreds of pages of material without assigning any
type of name as to the date the document was created, where the
document is being stored, who it was created by, things by
which you could identify the document, like the author, which
is certainly not that something that would be privileged, the
date that the document was created, where the document is being

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These are all things contemplated specifically by the
local rule so that we would have an idea what we are talking
about here this morning rather than referring to batches of
pages grouped together hundreds at a time.

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5 For example, the second entry lumps together 284
 6 pages, stating, documents containing information regarding an
 7 individual other than plaintiff. That's the nature of this
 8 whole lawsuit here. They arrested my client falsely and
 9 actually, judge, yesterday, for the very first time, the case
 10 officer who arrested my client, for the first time actually at
 11 the deposition, in watching a videotape related to this arrest,
 12 acknowledged, and he said it was for the first time and I am
 13 not surmising that, this is, I see now why he didn't do the
 14 stabbing, how he was the wrong guy. It was the first time
 15 ever.

16 He actually testified under oath yesterday that when
 17 the Queens District Attorney's Office dismissed the case
 18 against my client prior to trial, prior to any evidentiary
 19 hearings, the term he used, he was baffled, because there was a
 20 confession and he thought the case was rock-solid. He
 21 acknowledged yesterday that they arrested the wrong man. Why
 22 that's important, we have stated from the beginning of this
 23 case, on the date that my client was arrested, which is October
 24 24, 2005, for a murder which occurred almost 4 years prior,
 25 that the city had information in their possession as to the

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1 exact perpetrator of this crime.
 2 To that extent we provided to the court as an exhibit
 3 of this motion, one document we received during the criminal
 4 investigation as Brady material, was a document of actual
 5 knowing information from an informant and written down by law
 6 enforcement of another perpetrator, another stabber in this
 7 case. And we believe, judge, that the documents listed from
 8 pages 2 through 285 of this privilege log are another 284 pages
 9 of materials related to another person who had done this crime.
 10 THE COURT: Do you have an identification of who that
 11 person is.

12 MR. SIEGLE: We don't other than a nickname and an
 13 description that was on this paper.

14 THE COURT: Have you made any requests, since you have
 15 this particular theory about knowledge of this particular
 16 individual, have you made any requests for documents pertaining
 17 to that individual.

18 MR. SIEGLE: What we have asked for, judge, in the
 19 case is the entire investigation file from the New York City
 20 Police Department with regard to this case which we believe we
 21 are entitled to. We are certainly entitled to the file up
 22 until the day our client was arrested. I just want to explain
 23 to the court, there was a murder in this case in December of
 24 2001. My client was arrested in October 2005. There is almost
 25 a four-year window here for investigation by the New York City

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1 Police Department. We should be entitled at a minimum to all
 2 the materials that they had in their investigation up until the
 3 day our client was investigated to show why they investigated
 4 the wrong man here, excuse me, why they arrested the wrong man.

5 Additionally, the reasons we believe that we are
 6 entitled to more than just past the date of his arrest is to
 7 show a jury in this case at trial and to obtain discoverable
 8 evidence of all the things that they could have done before
 9 October 24 when they arrested our client that they had at their

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10 disposal beforehand. Interestingly enough, the city in its
 11 privilege log uses as the basis to refuse to turn over these
 12 materials, the law enforcement privilege. Well, judge, we
 13 disclosed yesterday or uncovered yesterday, I should use the
 14 word, that there is no open active investigation into this
 15 murder.

16 Up until yesterday, the case officer who arrested my
 17 client, the lead detective, believed my client guilty of this
 18 crime until yesterday. There has been no active investigation.
 19 The law enforcement privilege here, they are just citing that
 20 out of hand. There is no active investigation at this point in
 21 time. That was adduced at the deposition.

22 Judge, another part of this case and a burden which is
 23 on the plaintiffs in this case, in order to prove the city's
 24 responsibility under 1983 law, we have to meet the burden set
 25 forth in the Monell case. Part of what we have to prove is a

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1 pattern and practice employed by the police department which
 2 would, which did result in a violation of our client's
 3 constitutional rights, or we have to prove that the training
 4 and/or supervision employed by the New York City Police
 5 Department led to a violation of our client's constitutional
 6 rights.

7 The other documents contained in the privilege log
 8 here are training materials with regard to the officers who
 9 made the arrests. Specifically, we asked questions at the
 10 deposition, yesterday, and on Friday with regard to training of
 11 these officers, and Mr. Graziadei refused to allow these
 12 witnesses to answer questions, citing that the materials upon
 13 which they would base those answers have been asserted as
 14 privileged in his privilege log.

15 He would not let them testify as to their training
 16 into interrogation methods that are taught and used, into their
 17 assessment of probable cause, how they are taught and trained
 18 in that fashion, as to their training and employment of
 19 identification procedures in cases, their training and their
 20 employment of those training techniques with regard to
 21 investigating homicides, their training and their employment of
 22 that training with regard to investigating cold cases.

23 It's interesting; during the deposition yesterday,
 24 detective Milan testified that although this case wasn't
 25 officially termed a cold case by the New York City Police

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1 Department, despite the fact it was four years old at the time
 2 of the arrest, he considered it a cold case and, therefore, I
 3 believe we should be able to get all the training materials
 4 with regard to cold cases.

5 The city did provide limited materials here which we
 6 attached as the last exhibit to our motion. If you will see,
 7 there is, it's Exhibit 10, if you will see the city, without
 8 any basis, without including it in the privilege log, redacted
 9 the materials at their whim. We have no clue what's in those
 10 cases, what's been removed. There are cross-outs all over the
 11 document without any suggestion why they were removed. They
 12 are not included in the privilege log. We believe we are
 13 entitled to them.

14 I know there is lot here; I apologize. Other things

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15 that came up and are subject to our motion to compel are,
 16 during our investigation, we revealed, excuse me, during our
 17 review of the documents that were provided by the city, it is
 18 clear that numerous witnesses called 911 with regard to this
 19 incident. Our very first discovery request included a request
 20 from the city for 911 tapes with regard to this incident and
 21 also what's called the Sprint printouts of those communications
 22 which we are entitled to. We have never received copies of
 23 audiotapes here from the city with regard to those 911 calls or
 24 the Sprint printouts either.
 25 THE COURT: Have defendants advised you why they have

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1 not produced them.

2 MR. SIEGLE: No.

3 THE COURT: Did you ask them.

4 MR. SIEGLE: I don't have specific recollection of
 5 that, other than to say we sent correspondence to the
 6 defendants reiterating that request. Finally, we have asked
 7 for copies of all paperwork from the New York City Department
 8 of Corrections with regard to our client's approximately 340
 9 days in custody on this case. Our client, from the date of his
 10 arrest until the date the Queens County District Attorney's
 11 Office consented to his release on his own recognizance, our
 12 client spent 334 days, to be exact, in custody.
 13 We have asked for records in regard to his custody.
 14 We have asked for records in regard to the institution in which
 15 he was held. To this date I don't believe that the city has
 16 turned those over. We did discuss that specifically with the
 17 city, and I believe Mr. Graziadei specifically said they
 18 requested that information from the Department of Corrections
 19 and they were awaiting it. As of this date we still don't have
 20 it. This was a document discovery demand that was served on
 21 July 26, 2007.

22 I just want to point out some of the other privileged
 23 documents that we believe we are entitled to. I already
 24 discussed pages 2 through 285. There is page 1 which
 25 specifically requests information, which specifically says

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1 information of a confidential informant due to an open homicide
 2 investigation. There is no open homicide investigation here.
 3 We established that conclusively yesterday. There may be one
 4 again in the future based on the testimony yesterday, but there
 5 is no active open homicide investigation by the New York City
 6 Police Department.

7 Additionally, the city may have concerns as to
 8 revealing a specific confidential informant. As the city has
 9 taken it on their own with numerous other documents, the
 10 document could have been provided with a redaction as to the
 11 name of the confidential informant or certain identifying
 12 information, and let us see the rest of the document, or at
 13 least be able to make a motion with regard to that additional
 14 material.

15 Similarly, there are 100 pages numbered 316 through
 16 413, I think it's 97 pages, related to gang-related
 17 information. Apparently the city has information that this
 18 murder may have been perpetrated by members of a gang. Well,
 19 it was conclusively established at yesterday's deposition

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20 through documents and the testimony of the arresting officer
 21 who arrested Yang Feng Zhao that they had no information that
 22 Yang Feng Zhao was in a gang. Therefore, we believe these
 23 materials are even more relevant after the testimony yesterday
 24 than they were beforehand.
 25 There have been some statements by Mr. Graziadei to my

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1 partner in discussing this case, stating that the city believes
 2 our client is in a gang. We don't know the basis of that. I
 3 am sure it must come from these materials which are stated, 316
 4 to 413. The actual arresting officer who arrested our client
 5 on October 26, 2005, testified yesterday that he didn't have
 6 belief that our client was in a gang. But Mr. Graziadei has
 7 that belief. I believe it's probably because of those records,
 8 although, because they are lumped together in such a fashion, I
 9 don't know when that material arose or the dates of those
 10 materials, the author of those materials, the basis for those
 11 materials.

12 Finally, the last part of our motion which I don't
 13 think has to be discussed at this point is with regard to
 14 compelling production. There is an issue actually, compelling
 15 the production of witnesses for deposition by the discovery
 16 deadline, which is Thursday, October 18. The city has told us
 17 definitively that they cannot produce detective Sergio Rivera,
 18 whom we had noticed for deposition early in September, by the
 19 discovery deadline of October 18. We asked for permission in
 20 the alternative to either order the city to produce him or in
 21 the alternative if the court wants us to do it, we would take
 22 that deposition after the 18th with the court's permission, if
 23 that's something the court would be willing to do

THE COURT: Is Rivera still on the police force.
 MR. SIEGLE: I believe he is retired. All these

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1 witnesses whom we have requested depositions of, the city has
 2 failed to give us their addresses or telephone numbers for us
 3 to be able to try to subpoena them at all throughout this
 4 litigation. They claim that that is privileged pursuant to
 5 state law and therefore they are going to produce these
 6 witnesses and they have provided us no personal information
 7 with regard to a single law enforcement member involved in this
 8 case.

9 The other issue which arose Friday afternoon and is
 10 the subject of another motion I filed Friday night is a motion
 11 to quash. As you will see by the discovery schedule, the
 12 plaintiffs noticed and subpoenaed a nonparty witness in this
 13 case to testify on Wednesday morning. After that deposition,
 14 immediately after that deposition, we noticed another detective
 15 to testify. On Friday afternoon, Mr. Graziadei had my partner
 16 and I personally served with subpoenas to take our testimony to
 17 conflict with the depositions of those two witnesses.

18 As this court is readily aware, the law in the
 19 district is so compelling, subpoenas served on counsel to take
 20 their individual testimony are highly disfavored and should
 21 only be had if there is a showing, and that showing is pursuant
 22 to the Shelton case. I know that motion is not currently
 23 before the court, but it certainly affects the schedule we are
 24 talking about this morning. I believe, if the court would want

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25 me to talk about the motion to quash and the law regarding our
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1 testimony, I will, but we can hold that.
2 THE COURT: I am aware of the law.
3 MR. SIEGLE: Thank you, judge. I just wanted to state
4 that that was an issue that the city created. All of a sudden
5 in the 11th hour they have served subpoenas on my partner and
6 me personally to drive a wedge between us and our client and to
7 prevent us going forward with meaningful discovery of an
8 eyewitness to the murder on the morning of Wednesday, October
9 17. We noticed George Wang, one of the managers of the club
10 where this incident took place.
11 THE COURT: Obviously you are not going to be deprived
12 of your right to depose this fellow on the 17th of October.
13 MR. SIEGLE: Thank you, your Honor.
14 THE COURT: That's neither here nor there, but if
15 there is a basis for the defendants to depose the lawyers for
16 the plaintiff, that remains.
17 MR. SIEGLE: That's the full motion, your Honor.
18 THE COURT: Thank you.
19 Do defendants wish to be heard.
20 MR. GRAZIADEI: Yes, your Honor.
21 THE COURT: Let's start with witnesses and with
22 initial disclosures. Have you ever served a 26(a) disclosure
23 on behalf of the individual defendants in this case.
24 MR. GRAZIADEI: Your Honor, we served our 26(a)
25 disclosures on, I don't have a date, early on in the
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1 litigation.
2 THE COURT: That was a disclosure on behalf of the
3 city, not on behalf of the individual defendants. I repeat my
4 question: Have you served 26(a) disclosures on behalf of your
5 individual defendant clients.
6 MR. GRAZIADEI: Yes, your Honor; those disclosures
7 were on behalf of all the defendants.
8 THE COURT: They were not.
9 MR. GRAZIADEI: The 26(a) disclosures, your Honor,
10 were, although the individual defendants had not been served or
11 answered, it was on their behalf. It provided notice.
12 THE COURT: Why don't you show me where in the 26(a)
13 disclosure you say this is on behalf of the individual
14 defendants. Point me to that please.
15 MR. GRAZIADEI: The caption in the 26(a) disclosures
16 is the defendants' 26(a) disclosures, and we considered that
17 the defendants would be included and it would include
18 detectives Ng and Milan. We didn't wish to put form over
19 substance. At that point Judge Kaplan had ordered that we move
20 forward expeditiously and as quickly as possible in the
21 litigation. As soon as we were served with the subpoenas --
22 THE COURT: Counsel, let's not mince words, first of
23 all. The document we are talking about says as follows, and I
24 quote, please take notice that the defendant City of New York
25 by its attorney -- here I skip a few words -- on behalf of
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1 Mr. Cardozo hereby submit for its initial disclosure that.
 2 You have not submitted a 26(a) disclosure for your
 3 individual defendants. You have got 24 hours to do that.

4 Next item, that's a listing of witnesses with
 5 knowledge of the case.

6 MR. GRAZIADEI: Yes, your Honor.

7 THE COURT: You didn't do that even in the 26(a)
 8 disclosure that you served on behalf of the city. You referred
 9 to documents that are obviously incomplete, and at this point
 10 for sure you must have knowledge of the identity of all people
 11 with relevant knowledge of the claims and defenses in this
 12 case. You have 24 hours to serve a list of all those witnesses
 13 on the other side.

14 MR. GRAZIADEI: Yes, your Honor. I just take issue
 15 with one of the representations that Mr. Siegle has made. In
 16 those documents, detective Milan is referenced and also
 17 sergeant Conlon is referenced, and at the time those
 18 disclosures were made there was an application before the court
 19 for more time in which to answer because those were the only
 20 documents the city defendants had in their possession at the
 21 time.

22 THE COURT: You now have a whole lot more. So you
 23 provide the list of people with knowledge of the facts.

24 MR. GRAZIADEI: Yes, your Honor. With respect to
 25 certain other things Mr. Siegle has raised, he stated that he

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1 requested the inmate file of defendants and to date defendants
 2 have not turned that over. I would advise him to check his
 3 records. We have in fact turned that over.

4 THE COURT: What are the Bates numbers.

5 MR. GRAZIADEI: I don't have them with me.

6 THE COURT: Provide them by close of business today in
 7 writing, the Bates numbers of the documents that are responsive
 8 to that request.

9 MR. GRAZIADEI: Your Honor, did you say provide to
 10 Mr. Siegle.

11 THE COURT: Yes.

12 MR. GRAZIADEI: Yes, your Honor. In addition, he also
 13 said he provided us with requests for the 911 tape and the
 14 Sprint reports. I would note the Sprint reports have been
 15 included not only in the discovery but as attached to the 26(a)
 16 disclosures that Mr. Siegle referenced earlier in this very
 17 conference.

18 THE COURT: You can identify by Bates numbers those
 19 disclosures as well. You said also that as part of this
 20 request were the 911 tapes. Have those been provided.

21 MR. GRAZIADEI: Mr. Siegle himself provided them to
 22 us. Those are the only ones we know to be in existence.
 23 Mr. Siegle has again put form over substance. He has the tape
 24 of the 911 call, and we don't have a copy of those in our
 25 possession. Those tapes are expunged after a certain period of

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1 time. Given the tight schedule, I have made a request of
 2 people in my office to continue to search for them, although to
 3 date we have not located that there are any or have made a
 4 determination that there are any in existence. However,
 5 nevertheless, Mr. Siegle has that tape in his position, as he

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turned it over in discovery to us.

THE COURT: You say this is an ongoing search for tapes that you say have been expunged.

MR. GRAZIADEI: We are always looking for more information if it ever comes to light. We are cognizant of our continuing obligation to turn over discovery that comes to light.

THE COURT: By the end of tomorrow, an affidavit to the other side from your office from someone with personal knowledge, specifying the scope and nature of the search made for the tapes and the factual basis for your representation that, as far as you know, the tapes have been destroyed.

MR. GRAZIADEI: To clarify, your Honor, I didn't say that I had a factual basis the tapes have been destroyed; my understanding is that after six months the tapes are no longer in existence.

THE COURT: Tapes from what period.

MR. GRAZIADEI: This tape would have been made for the calls of the night of October 24, 2005.

THE COURT: It is your understanding that if, as you

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claim, in document responses and privilege logs, there is an ongoing investigation of this homicide, that the 911 tapes will nonetheless still be destroyed during the pendency of an investigation.

MR. GRAZIADEI: I don't have any knowledge of that.

THE COURT: Well, counsel, these tapes are requested from you as attorney for defendants. As you well know, you have an obligation under the federal rules and as an officer of the court to determine through your clients, including the police department, the information necessary to respond properly to such a request. So for you to be standing here now on the eve of the close of discovery saying that you really don't know anything about these tapes at all essentially obviously reflects the failure by you to do that which you are obliged to do.

You will be required before the end of this week to find out from the police department and whoever else you need to find it out from, including the District Attorney's Office or your own office, whether or not tapes were created at any time pertaining to this homicide investigation and what their fate was. You are to provide an affidavit by a person with personal knowledge at the close of business by the end of this week to the other side specifying the fruits of your investigation.

This is not a satisfactory state of affairs. You

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cannot leave this to idle speculation. The tapes have to be dealt with in a more specific, concrete manner.

MR. GRAZIADEI: I do want to emphasize also, your Honor, that in response to your question Mr. Siegle indicated, your question specifically has he ever asked or brought this to my attention, the answer is in fact no, he has not, until this filing of this motion.

THE COURT: The privilege log, which appears to, as the plaintiff points out, lump together hundreds of pages of what appear to be discrete documents, without specification of

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11 dates or anything else. I don't know what basis you have for
 12 doing that. Perhaps you can tell me.

13 MR. GRAZIADEI: Yes, your Honor. With respect to the
 14 first document, Bates number NYCP-1, listed on the privilege
 15 log, it was a page that referenced information pertaining to a
 16 confidential informant. As a result of the law enforcement
 17 privilege and the dangers that could arise with respect to
 18 disclosing information pertaining to a confidential
 19 informant --

20 THE COURT: I think you are missing the question. My
 21 question does not deal with specifics of the basis for your
 22 claim of privilege for document number 1. It dealt with the
 23 problem I see in the privilege log where you lump together in
 24 categories without other distinction hundreds of pages of
 25 apparently disparate papers and do not identify them. I am

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1 asking you for the basis for your assumption, I assume you have
 2 an assumption, this is a valid way of doing a privilege log.

3 MR. GRAZIADEI: Yes, your Honor. My office prepared
 4 this privilege log, and with respect to the pages that have
 5 been lumped together, they are in fact all of a similar nature
 6 with respect to certain documents. With respect to for
 7 instance 2 to 285, my understanding is that those are, upon
 8 information and belief, because I don't have the documents in
 9 front of me, those documents are all DE-5 documents which are
 10 police records. The reason why they have been identified as
 11 such is because they do identify another person in this
 12 investigation who may in fact be a suspect and for whom the
 13 police were still looking.

14 THE COURT: Still looking when.

15 MR. GRAZIADEI: Upon information and belief, as soon
 16 as last week or two weeks ago, my understanding was they were
 17 trying to locate him and they had new information about this
 18 person's whereabouts, that he was a person of interest, they
 19 were interested in speaking with him and locating him.

20 THE COURT: There was a deposition yesterday --

21 MR. GRAZIADEI: Yes.

22 THE COURT: -- of detective Milan. Was he involved in
 23 this investigation.

24 MR. GRAZIADEI: Yes, your Honor. I understand
 25 Mr. Siegle testified that yesterday he said he still believes

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1 or believed at the time during the deposition that the
 2 plaintiff in this litigation still committed the crime and that
 3 was in fact his belief at the time and in fact he was still
 4 interested in prosecuting the plaintiff in this case and was
 5 looking for additional evidence with which to do so and perhaps
 6 suggesting it to another area or branch of law enforcement.

7 In addition, he was looking for other people because
 8 he had not ruled out conclusively that it was possible that
 9 someone else had committed the crime, and these documents
 10 pertain to someone who would either have been the person who
 11 was the next logical suspect for the homicide underlying the
 12 investigation, or someone who could provide conclusory evidence
 13 or conclusive evidence with respect to the plaintiff's own
 14 guilt.

15 With respect to the tape that Mr. Siegle and plaintiff
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16 showed Mr. Milan yesterday, Mr. Siegle is somewhat disingenuous
 17 to the extent that he suggests that detective Milan was failed
 18 in his responsibility to ever see this tape and had never
 19 looked at this tape. This tape was in fact prepared by
 20 plaintiff's expert, and I am looking at plaintiff's expert's
 21 report, it was reformatted by a company called Now You See It
 22 Investigative Services. So that additional information on the
 23 videotape was now made visible. This information was not
 24 visible on the tape that the detective had while he was in the
 25 process of investigating this open homicide.

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1 THE COURT: With respect to the privilege log and the
 2 claim of privilege, that is what we are going to do. The
 3 defendants are to serve and file an affidavit by someone with
 4 personal knowledge providing an evidentiary basis for any
 5 claims of privilege with respect to each of these documents. I
 6 emphasize each of these documents, not a global reference to
 7 285 pages of documents, all of which are kind of similar, all
 8 of which are significant in ways that prevent any disclosure.
 9 There is also going to have to be a very specific
 10 showing as to why, if there are particular pieces of sensitive
 11 information, such as the identity of a suspect or identifying
 12 information of a suspect, why the document cannot be produced
 13 in redacted form.

14 That's to be done in one week. I suggest that you
 15 accompany that with a memo of law explaining the legal basis
 16 for your claims of privilege and of course in the meantime if
 17 you decide that any of the privilege claims are not really
 18 defensible, feel free to turn over the document either in
 19 redacted or unredacted form to the other side as you deem
 20 appropriate.

21 MR. GRAZIADEI: With respect to your order, your
 22 Honor, does this pertain to every category.

23 THE COURT: It pertains to everything on this
 24 privilege log.

25 MR. GRAZIADEI: I note the plaintiffs have not made an
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1 argument for production of documents that reflect information
 2 of the personal or personal information relating to the victim.

3 THE COURT: Correct. That's one they have not touched
 4 on, so you need not respond to that.

5 MR. GRAZIADEI: Documents 316 to 413, those documents,
 6 I will have to look at those documents specifically to see if
 7 there are any additional arguments to be made.

8 THE COURT: Or whether the documents could be redacted
 9 in a way to eliminate the identification of the individuals
 10 that you reference in the privilege log which might still
 11 provide useful and relevant information to the plaintiff.

12 MR. GRAZIADEI: Yes, your Honor.

13 THE COURT: You will have to deal with that. All of
 14 the third category needs to be addressed.

15 MR. GRAZIADEI: With respect to the criminal
 16 investigators course and the homicide investigators course,
 17 your Honor, defendants have argued, and as they briefed in the
 18 October 15, 2000 letter to the court, that disclosing
 19 information of that nature is unnecessary for purposes of this
 20 litigation.

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21 THE COURT: which is not a privilege argument per se.
 22 MR. GRAZIADEI: It's a law enforcement privilege
 23 argument, your Honor, because the law enforcement privilege
 24 does in fact cover, I do quote the Second Circuit, In Re
 25 Department of Investigation of the City of New York.
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1 THE COURT: I am well aware of what the Second Circuit
 2 said in that decision as well as other decisions. You may want
 3 for some guidance to look at more recent decisions that have
 4 applied those cases in pertinent contexts. In any event, you
 5 will also have to consider and address the question whether
 6 even if you make an arguable showing that some of the training
 7 materials are potentially sensitive, why their production on,
 8 for example, an attorneys-eyes-only basis would pose such an
 9 irremediable threat to law enforcement in the city that no
 10 production should be made at all, if you can defend that
 11 position. In any event, that is an issue; you have to
 12 recognize it.

13 One week after defendants' submission for plaintiff to
 14 respond. I will also ask that you include the transcript of
 15 detective Milan's deposition. If you need to order it
 16 expedited, order it expedited. To the extent there is a
 17 dispute about what he said about whether there is an open
 18 investigation, well it's not significant to the law enforcement
 19 privilege, I am not saying it's necessarily definitive, but it
 20 is a factor.

21 MR. GRAZIADEI: Detective Milan, your Honor, testified
 22 that as of the time he picked up the case in 2003, late in
 23 2003, it may have been April 2003, that at that time he did not
 24 consider it technically an open investigation, but that he
 25 picked it up, although nothing had been done that he was aware
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1 of for the previous six months in that investigation.
 2 THE COURT: I think rather than trying to narrate your
 3 memory of what he said, it's going to be easier to order the
 4 deposition transcript, both sides make whatever arguments they
 5 want to make off the transcript, and I will consider it, but I
 6 can't decide now anything based on what detective Milan did or
 7 didn't say, because I have no idea what he did or didn't say,
 8 and it's obviously in some dispute.

9 There was a reference by plaintiff to some documents
 10 that were produced but with redactions and do not appear on the
 11 privilege log.

12 MR. GRAZIADEI: Those redactions were redacted or made
 13 to those documents because they were not relevant or reasonably
 14 calculated to lead to discovery of admissible evidence. They
 15 were simply portions of the patrol guide. That had nothing to
 16 do with the claims in this case. They were not privileged
 17 material. We didn't assert privileges. We just simply said
 18 they are not responsive.

19 THE COURT: For future reference, if you are going to
 20 redact material, you have to communicate to the other side the
 21 basis for the redaction. If it's nonprivileged and you are
 22 simply redacting on the basis of relevance, you have to inform
 23 the other side so he is not left scratching his head, wondering
 24 where on the privilege log are the redactions. Normally
 25 redactions are appropriate only for privileged material.

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1 MR. GRAZIADEI: I submit that many of these issues
2 could have been resolved had Mr. Siegle raised them prior to
3 filing the motion.

4 THE COURT: Let's put it this way; given what happened
5 before Judge Kaplan in the last week or two, both sides are
6 obviously under some extreme time pressures at this point which
7 is not going to prevent us from dealing with all of the open
8 issues that need to be dealt with. But I recognize, normally I
9 am the first one to say you have to talk to each other, but I
10 recognize that things have gotten perhaps out of control in
11 terms of getting things done, trying to cover all bases, on
12 both sides.

13 MR. GRAZIADEI: Yes, your Honor. I do submit the
14 defendants have made their best efforts to try to accommodate
15 what has become an extremely tight discovery schedule including
16 transporting and providing for deposition four officers who are
17 retired and three of which are out of state within the
18 discovery calendar. Part of defendants' motion, and this was
19 on the consent of plaintiff, was to conduct one retired officer
20 who is a nonparty to this litigation on October 22.

21 THE COURT: Detective Rivera.
22 MR. GRAZIADEI: Yes. We have tried to get him here in
23 advance of the October 18 deadline. He stated that he would be
24 willing to come for deposition, to present himself for
25 deposition without a subpoena in New York, but the earliest he

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1 could it would be October 22.
2 THE COURT: That's fine. I am just going through my
3 notes to be sure that we are covering all bases. With respect
4 to the noticed depositions of both plaintiff attorneys, I am
5 not going to get into the substance of that. I don't have that
6 motion in front of me. I don't know that there has been a
7 response to it. In any event, since other depositions, at
8 least one other deposition was scheduled for that day, any
9 depositions of plaintiff's attorneys are going to be postponed
10 in any event pending resolution of the motion to quash.

11 Are there any other open issues that we have not
12 touched upon at this point.

13 MR. GRAZIADEI: With respect to the postponement of
14 plaintiff's counsel's depositions, we also requested documents
15 and/or in the alternative a privilege log with respect to those
16 documents. We respectfully request those be produced, while we
17 would be amenable to postponing and rescheduling with
18 plaintiffs their depositions.

19 THE COURT: That's something you should take up with
20 the witnesses whom you have subpoenaed. See if you can work
21 something out along those lines. What is the motion schedule
22 on this motion to quash at this point.

23 MR. SIEGLE: They served us with the subpoenas during
24 a deposition on Friday afternoon. By Friday evening, the
25 motion was submitted. So it's sub judice now. They have two

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1 business days to respond. They should be responding today to
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2 our motion to quash as they should have responded to the motion
3 before court last week on October 11.

4 THE COURT: Are there any other open issues at this
5 point on what has been presented by the plaintiff to the court.

6 MR. GRAZIADEI: Yes, your Honor, there are. With
7 respect to disciplinary materials, CCRB evaluations,
8 investigations, plaintiffs served their requests and defendants
9 timely served their responses on August 28, 2007. We agreed to
10 provide performance evaluations at that time. We did not
11 receive any objections to that response or attempt to resolve
12 that dispute until receiving their motion, this motion that's
13 before the court today, with respect to those disciplinary
14 matters.

15 THE COURT: Did you provide the evaluations.

16 MR. GRAZIADEI: We did, your Honor. So this is the
17 first time we have had an opportunity to resolve this dispute.
18 The defendants have moved for a protective order pursuant to
19 26(f) because the issues --

20 THE COURT: When.

21 MR. GRAZIADEI: In response to their motion, your
22 Honor.

23 THE COURT: I have received no response to their
24 motion.

25 MR. GRAZIADEI: I filed it yesterday.
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1 THE COURT: I have not got it.

2 MR. GRAZIADEI: I ECF'd it. I apologize if you have
3 not had an opportunity to see our argument in this matter. I
4 have my notes on it, but there is underlining.

5 MR. SIEGLE: Your Honor, Judge Kaplan's rules provide
6 two business days to respond on a motion for discovery
7 requests. This was responded to --

8 THE COURT: I should note this is addressed to Judge
9 Kaplan. Perhaps it's not a surprise we didn't see this. In
10 any event, this is I think one of these bobbles that comes with
11 high speed.

12 MR. SIEGLE: It's not a bobble.

13 THE COURT: Let me quickly scan this.

14 MR. SIEGLE: Sure.

15 (Pause)

16 THE COURT: With regard to the disciplinary personnel
17 records and the like, have you provided a list of whatever
18 complaints were made so we have some idea whether they might be
19 relevant or not.

20 MR. GRAZIADEI: No, your Honor. We provided the
21 performance evaluations as we responded in our objections and
22 responses. We did not receive any objections to our
23 objections.

24 THE COURT: I know you told me that before. My
25 question is in response to the current motion by the plaintiff,

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1 you submitted this letter from October 15 in which you argue
2 that among other things, quote, unsubstantiated allegations of
3 misconduct that have no similarity to the misconduct alleged in
4 the complaint and that are remote in time are clearly
5 irrelevant.

6 Putting aside whether that's a correct statement of
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7 the law or not, have you provided a list of the claims or
 8 accusations that were made and how they were disposed so that
 9 plaintiff or the court can judge whether these are
 10 unsubstantiated allegations of misconduct that have no
 11 similarity to the misconduct alleged in the complaint and that
 12 are remote in time. Have you done that.

13 MR. GRAZIADEI: No, your Honor.

14 THE COURT: How is the court, whether it be Judge
 15 Kaplan or me, supposed to evaluate this argument without even
 16 knowing whether or not any of the complaints or charges or
 17 whatever were remote in time, what they were about, how they
 18 were disposed of, whether they were deemed unsubstantiated. We
 19 can't indulge in extrasensory perception or mind-reading. Why
 20 have you not provided that information.

21 MR. GRAZIADEI: In the letter with respect to at least
 22 the law enforcement privileged documents and other documents we
 23 claim privilege to, we suggested we would promptly forward the
 24 court the documents for in camera review. I would suggest the
 25 same would be true for the disciplinary matters.

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1 THE COURT: You are to provide by close of business
 2 end of this week a list to the plaintiff of any charges, any
 3 complaints, whether they be CCRB or IAB, whatever they are,
 4 with respect to these defendants, officers or detectives,
 5 dates, nature of charges, disposition. You can, in fact I
 6 think it is appropriate when you make your privilege submission
 7 to include a section on these documents, so-called for want of
 8 a better phrase, disciplinary personnel records we will call
 9 them, you can submit those for in camera review.

10 Obviously, you are required to submit an affidavit
 11 that will address in detail the particular harm that you claim
 12 will arise if any of these documents, disciplinary documents,
 13 are disclosed to the other side, whether to the other without
 14 condition or to the other side on some limited basis such as
 15 attorneys eyes only. I know that the law department is fond of
 16 have citing Thompson v. The City of New York. I think you
 17 should address yourself to the realm of decisions that are not
 18 in accord with Thompson.

19 Any other open issues at this point.

20 MR. GRAZIADEI: No, your Honor, but so I am clear, can
 21 we have a list of the various orders. I know that some
 22 things --

23 THE COURT: Order the transcript, and you should order
 24 it on an expedited basis.

25 MR. GRAZIADEI: With respect to the immediate
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1 deadlines, I believe your Honor ordered that 26(a) disclosures
 2 should be made within 24 hours, is that correct.

3 THE COURT: What should be.

4 MR. GRAZIADEI: The 26(a) disclosures with respect to
 5 the witnesses.

6 THE COURT: That's right.
 7 Anything else at this time.

8 MR. SIEGLE: Yes. I don't want cut off Mr. Graziadei.
 9 we deposed detective Milan yesterday, one of the defendants in
 10 the case. We are deposing detective Ng, the other named
 11 defendant in the case today. The city has refused to allow

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12 these officers to testify as to their training, to testify as
 13 to their training in interrogation, their assessment of
 14 probable cause, conducting identifications.

15 THE COURT: Let me cut this short. I am not going to
 16 make a ruling in advance but I will tell you very clearly, if I
 17 find that any of these directions not to answer were improperly
 18 done, all of those people will have to be returned for further
 19 deposition.

20 MR. GRAZIADEI: I would like to clarify that most of
 21 the questions Mr. Siegle just specified were not in fact asked.
 22 With respect to --

23 THE COURT: If they were not, it will be a moot point.

24 MR. GRAZIADEI: With respect to the assertions
 25 yesterday at detective Milan's deposition, I suggested that the
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1 reason for the direction not to answer was the motion pending
 2 before the court, that in every instance I must have reiterated
 3 at least five to ten times we should call the court for a
 4 ruling so we could avoid that very circumstance if necessary,
 5 and plaintiffs opted not to call the court.

6 THE COURT: As I said, if it turns out that there were
 7 directions not to answer that were inappropriate, the witness
 8 will be required to return to complete the deposition.

9 MR. GRAZIADEI: To avoid that circumstance from
 10 happening in today's deposition, is it possible that we can
 11 determine what is the scope of their required responses to
 12 questions regarding the criminal investigators course, homicide
 13 investigators course.

14 THE COURT: You want a ruling now. Tell me if you
 15 want a ruling, I will give you a ruling.

16 MR. GRAZIADEI: What I want to avoid, I know we have a
 17 week to respond to our privilege on these matters, but that I
 18 would like to avoid is the possibility that we assert a
 19 privilege, direct a witness not to answer the questions, and
 20 then find ourselves in a position where the court would
 21 disagree with our position at the deposition.

22 THE COURT: You can do it one of two ways, either have
 23 a ruling now or you can choose to take your chances.

24 MR. GRAZIADEI: What we asserted was that the proper
 25 response to the question would be what was their practice,
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1 their experience, what was their knowledge, but not to answer
 2 questions on what they are trained specifically in doing with
 3 respect to the actual techniques that we asserted the privilege
 4 for.

5 THE COURT: I confess to you I cannot imagine how you
 6 would defend that position. If you want a ruling I would
 7 reject that position. If you want don't want a ruling, I will
 8 await your papers. Take your pick.

9 MR. GRAZIADEI: Your Honor, it would be difficult to
 10 assert a privilege with respect to materials that we consider
 11 confidential because of law enforcement privilege then permit
 12 defendants to actually testify as to everything that are within
 13 those materials.

14 THE COURT: Counsel, I am not going to beg. You
 15 either want a ruling or you don't want a ruling. I am sure you
 16 want a ruling in your favor now. That's what you are asking

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17 for. That's not going to be given. If you want an adverse
18 ruling, if you want a ruling, now it will be an adverse ruling.
19 If you want me to wait for your papers, I will withhold
20 judgment, come to it with an open mind.

21 MR. GRAZIADEI: Thank you, your Honor.

22 THE COURT: What's your pick.

23 MR. GRAZIADEI: We will be directed accordingly at
24 deposition and we will submit our papers as you ordered.

25 THE COURT: Any other items.

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1 MR. SIEGLE: One, very briefly, based on the court's
2 rulings today, I am going to ask the court, we brought this
3 case in federal court because we wanted an expeditious schedule
4 and we got it, based on the court's rulings, I am going to ask
5 for a brief 3-week enlargement from Thursday based on
6 everything that transpired today.

7 THE COURT: I am not in a position at the moment to
8 deal with the overall extension of the discovery deadline. The
9 problem is the ordered reference from Judge Kaplan was to deal
10 with a discovery motion. I will set dates based on our
11 adjudication of all these issues on an issue-by-issue basis.
12 My assumption is, because I will tell you we have a call into
13 Judge Kaplan's chambers about that question, whether I am
14 permitted to deal with the overall schedule, and we have not
15 yet had a response. By the time some of this gets sorted out
16 in the next couple of days, we will undoubtedly have an answer
17 to the question. If either side, or both side want to make a
18 pitch for a movement of the general deadline back, you will be
19 free to do so.

20 MR. SIEGLE: Just brief, a couple weeks.

21 MR. GRAZIADEI: Thank you, your Honor.

22 THE COURT: Thank you.

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EXHIBIT 13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
YANG FENG ZHAO,

Plaintiff,

-against-

CITY OF NEW YORK et al.,

Defendants.
-----X

MEMORANDUM & ORDER

07 Civ. 3636 (LAK) (MHD)

MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE:

Plaintiff seeks relief for what he claims are inappropriate objections and answers by defendants to a set of requests for admissions and a separate set of interrogatories and document requests. Most of the Rule 36 requests are addressed to certain video capacities of the Police Department during a period of time relevant to the claims in this case. (Letter from Eric W. Siegle, Esq., to the Court, Nov. 30, 2007.) The remaining requests concern the authorship of certain notations in a police log book and the question of whether several videotapes produced by plaintiff are identical to a videotape in the possession of the Department.

Most of the requests in dispute concern the dates of acquisition of certain video equipment. Defendants have responded that they are unable to make this determination, but they offer no explanation for these assertions, either in their response or in

their opposition to plaintiff's application to the court. On its face, defendants' objection to these requests is meritless, and their assertion that they cannot obtain the information is entirely unexplained and indeed mystifying.

Defendants refer, however, to an apparently impending deposition of a witness from the Department's TARU unit, who may be able to provide the requested information. If that deposition has not yet taken place, we will adjourn defendants' obligation to answer in a responsive manner until one week after the deposition has been taken. If the deposition has already taken place, then defendants are to supplement their current responses to state what information they have that is responsive to these requests and what information they are unable to supply and why.

A further request seeks to determine whether all of the entries in a specific multi-page document were authored by Det. Vincenzo Romano. Again, the parties are unclear as to whether Det. Romano answered that question at his deposition, and defendants do not explain their response, stating in substance that they cannot answer the request. We direct that they provide a responsive answer.

The last disputed request asks whether several videotapes

provided by the plaintiff are identical to a videotape held by the Department. Defendants argue that this is a difficult question to answer because there may be slight technical adjustments to the videotapes supplied by plaintiff. The thrust of the plaintiff's inquiry seems to be whether defendants will contest the authenticity of the plaintiff's videotapes for purposes of admissibility. If defendants are unable to make a determination of identity, they are to so represent but indicate in their response the extent, if at all, of the congruence between their videotape and the plaintiff's proffered tapes.

The remaining dispute concerns one document reflecting the purchase of some video equipment by the Police Department. The defendants have redacted the price as irrelevant, but do not assert a privilege as to that piece of information. The information is at least marginally relevant under the liberal standards applicable to discovery, and in any event redaction is ordinarily inappropriate merely on the basis of a claim of irrelevance. Defendants are to produce an unredacted copy of this document.

Dated: New York, New York
December 17, 2007



MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE

Copies of the foregoing Memorandum and Order have been mailed today to:

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